LIBEL AND SLANDER—LIBEL PUBLISHED IN A WILL.—A testator inserted in his will language libeling the plaintiff. After the testator's death the will was duly probated. The plaintiff brought an action against the testator's estate grounded on the libel published in the will. *Held,* the action will lie. *Harris* v. *Nashville Trust Co.* (Tenn.), 162 S. W. 584.

It seems clear that the publication made by probating the will was a publication by the testator. *Qui facit per alium facit per se.* Since the right of action did not accrue until after the death of the testator the case presents a very limited field for the operation of the maxim *"actio personalis moritur cum persona."*

The origin of and reason for this maxim are veiled in obscurity. The rule of the ancient common law seemed to be that the death of a party discharged any obligation. *Bracton, fol.* 101. It seems that it was not until the time of Elizabeth that the maxim was limited in its application and confined to actions *ex delicto. Finley* v. *Chirney,* L. R. 20 Q. B. 494. The modern doctrine confines it to torts that are not against property. *Phillips* v. *Homfray,* L. R. 24 Ch. Div. 439; *U. S.* v. *Daniel,* 6 How. (U. S.) 11. The rule is one of precedent that cannot be reconciled with the accepted modern legal principles. Therefore it seems that it should not be applied in cases of novel impression.

The denial of a right of action in the principal case would open the door to the publication of false and malicious statements of every kind, especially as the wrongdoer in such cases is no longer amenable to the deterrent effects of criminal punishment. On the other hand, it seems that punitive damages should not be awarded as the penalty inflicted would fall upon the innocent beneficiaries alone. But the injured party should be compensated on the principle that wherever a right has been violated the law will afford a remedy. *Kujeck* v. *Goldman,* 150 N. Y. 176, 44 N. E. 773, 55 Am. St. Rep. 670, 34 L. R. A. 156.

It seems that the persons concerned with the actual probate of the will are not liable as they are performing a legal duty, and so their acts should be privileged.

A *nisi prius* court has held that an action as in the principal case would lie. COOLEY, TORTS, students' ed., 249, citing *Gallagher's Estate,* 10 Pa. Dist. Ct. 733.

MASTER AND SERVANT—BREACH OF CONTRACT—DAMAGES RECOVERABLE.—The plaintiff was employed by the defendant for one year at a fixed compensation per month. After five months the defendant discharged the plaintiff without cause. *Held,* the plaintiff has an immediate right of action for the breach of contract but that only such damages as have already accrued at the time of the trial can be recovered. *Louisiana Rio Grande Canal Co.* v. *Quinn* (Tex.), 161 S. W. 375.

As a general rule when a servant has been wrongfully discharged he may choose any one of three courses. He may treat the contract as rescinded and recover at once on a *quantum meruit. Fowler* v. *Armour,* 24 Ala. 194; *Brinkley* v. *Swicegood,* 65 N. C. 626. He may wait until the end of the term and recover the full amount contracted for, less any sum which the defendant may have the right to set off. *Holloway* v. *Talbott,*